

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

RAINBOW HAWAII FARMS, LLC,

Respondent.

CASE NO. OSH 2009-19
Inspection No. 311435846

ORDER NO. 330

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial/settlement conference in this matter held by the Hawaii Labor Relations Board (Board) on July 6, 2009, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and Raymond C. Young, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 29 CFR 1910.142(b)(9)

Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435846, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1910.142(b)(9) was violated because:

Food storing and preparation areas (kitchen counter top and an old electrical stove top) were not maintained in a sanitary condition. By preparing the food in an unsanitary environment, the employee(s) were potentially exposed to food borne illnesses.

2. Citation 1, Item 2 29 CFR 1910.142(j)

Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435846, was valid and proper?

Citation 1, Item 2 alleged:

29 CFR 1910.142(j) was violated because:

A live rat was observed in the rear bedroom during the inspection. By living in the environment where no effective measures were taken to control rodents, the employees were potentially exposed to vector borne illnesses carried by rodents.

3. Citation 1 Item 3 29 CFR 1910.303(b)(2)

Whether Citation 1, Item 3, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435846, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.303(b)(2) was violated because:

Following listing/labeling violations were observed at the establishment. By using the equipment, which did not meet listing/labeling requirements, the employee(s) were potentially exposed to serious electrical injuries.

- A 20 foot orange extension cord was daisy chained to multi-tap power strip (front bedroom).
- A junction box, which was connected to a 220 V receptacle, was not mounted to the kitchen wall.
- A 220 V receptacle, into which an electrical stove was plugged, was not mounted on the kitchen wall.

4. Citation 1 Item 4 29 CFR 1910.304(g)(5)

Whether Citation 1, Item 4, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435846, was valid and proper.

Citation 1, Item 4 alleged:

29 CFR 1910.304(g)(5) was violated because:

The grounding path from circuits, equipment and enclosures were not permanent, continuous, and effective. Wall receptacles were not properly grounded. Without proper grounding paths, the employee(s) were potentially exposed to serious electrical injuries.

5. Citation 1, Item 5a 29 CFR 1910.305(b)(2)(i)

Whether Citation 1, Item 5a, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435846, was valid and proper.

Citation 1, Item 5a alleged:

29 CFR 1910.305(b)(2)(i) was violated because:

A bathroom wall receptacle was missing its faceplate. Without a proper faceplate, the employee(s) were potentially exposed to serious electrical injuries.

6. Citation 1, Item 5b 29 CFR 1910.305(g)(2)(ii)

Whether Citation 1, Item 5b, including the characterization as "Serious", resulting from Inspection No. 311435846, was valid and proper.

Citation 1, Item 5b alleged:

29 CFR 1910.305(g)(2)(ii) was violated because:

A 20 foot orange extension cord, which had a section of spliced wires, was plugged into a wall outlet to supply power to a power strip. By using the spliced

extension cord, the employee(s) were potentially exposed to serious electrical injuries.

7. Citation 2 Item 1 29 CFR 1910.142(b)(3)

Whether Citation 2, Item 1, including the characterization as "Other", resulting from Inspection No. 311435846, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1910.142(b)(3) was violated because:

Bedding sets were not elevated at least 12 inches from the floor.

8. Citation 2, Item 2 29 CFR 1910.142(f)(2)

Whether Citation 2, Item 2, including the characterization as "Other", resulting from Inspection No. 311435846, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1910.142(f)(2) was violated because:

Bathroom floor/walls/fixtures were torn down exposing various openings. There was no wall, partition or curtain between the shower tub and the toilet to prevent water from splashing outside shower.

9. Citation 2, Item 3 29 CFR 1910.142(f)(3)

Whether Citation 2, Item 3, including the characterization as "Other", resulting from Inspection No. 311435846, was valid and proper.

Citation 2, Item 3 alleged:

29 CFR 1910.142(f)(3) was violated because:

No hot running water was available for bathing and laundry since the water heater had been broken.

10. Citation 2, Item 4 29 CFR 1910.305(g)(1)(iv)(A)

Whether Citation 2, Item 4, including the characterization as "Other", resulting from Inspection No. 311435846, was valid and proper.

Citation 2, Item 4 alleged:

29 CFR 1910.305(g)(1)(iv)(A) was violated because:

Various flexible cords, including two one-outlet extension cords, four two-outlet extension cords, and two power strips, were used as a substitute for fixed wiring of a structure to provide power to various home appliances including a laundry machine, refrigerators, a microwave oven, fans, rice cookers, etc.

11. Citation 2, Item 5 29 CFR 1910.305(g)(1)(iv)(C)

Whether Citation 2, Item 5, including the characterization as "Other", resulting from Inspection No. 311435846, was valid and proper.

Citation 2, Item 5 alleged:

29 CFR 1910.305(g)(1)(iv)(C) was violated because:

A flexible cord, which was connected to a laundry machine, ran through an open jalousie window to be plugged into a power strip outside the front bedroom.

12. Citation 2, Item 6 29 CFR 1910.305(g)(2)(iii)

Whether Citation 2, Item 6, including the characterization as "Other", resulting from Inspection No. 311435846, was valid and proper.

Citation 2, Item 6 alleged:

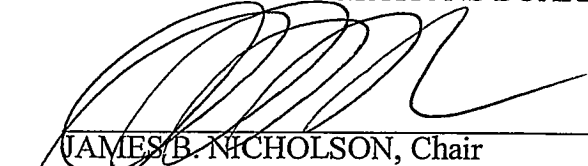
29 CFR 1910.305(g)(2)(iii) was violated because:

Strain relief to prevent a cord from being directly pulled from transmitted joints or terminal screws had not been provided on a 20 foot orange extension cord.

- B. The deadline for the parties' final naming of witnesses is **August 10, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **September 8, 2009**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **November 2, 2009 at 9:30 a.m. and November 3, 2009 at 8:30 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, July 8, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General
Raymond C. Young